

01
02
03
04
05
06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 ERIC R. TOWNSEL,) CASE NO. C07-0482-JLR
09 Plaintiff,)
10 v.) ORDER RE: PLAINTIFF'S
11 ANDRES MUNK, M.D.,) PENDING MOTIONS
12 Defendant.)
13 _____)

14 This is a civil rights action brought under 42 U.S.C. § 1983. On the same date as this
15 Order, this Court issued a Report and Recommendation recommending that Dr. Munk's motion
16 for summary judgment be granted and that plaintiff's cross-motion for summary judgment be
17 denied. Seven additional pending motions will now be addressed. The Court has reviewed
18 plaintiff's motions and does hereby ORDER as follows:

19 (1) Plaintiff's motion for an extension of time to file a response to Dr. Munk's motion
20 for summary judgment (Dkt. No. 145) is GRANTED. Plaintiff's response to Dr. Munk's motion
21 for summary judgment/cross-motion for summary judgment was received on January 5, 2009, and
22 was made a part of the record.

01 (2) Plaintiff's motion to compel discovery from Mr. Quinn, Mr. Kucza, Mr. Bustanoby,
02 and Mr. Bratten (Dkt. No. 136) is DENIED. Plaintiff does not describe in his motion what
03 discovery he is seeking from these individuals. Moreover, it appears unlikely that any additional
04 materials obtained from these individuals, who are all employees of the Washington Department
05 of Corrections, would alter this Court's recommendation with respect to the pending cross-
06 motions for summary judgment.

07 (3) Plaintiff's motion to compel discovery from Dr. Munk (Dkt. No. 137) is DENIED.
08 The record reflects that Dr. Munk supplemented the discovery responses which are the subject of
09 plaintiff's motion to compel. Accordingly, plaintiff's motion to compel discovery from Dr. Munk
10 is now moot.

11 (4) Plaintiff's motions to compel discovery from Patti Lee, Valley General Hospital,
12 and the Evergreen Orthopedic Clinic (Dkt. No. 139) are DENIED. It does not appear that the
13 subpoenas seeking the discovery at issue here were properly served in accordance with Fed. R.
14 Civ. P. 45(b)(1). Moreover, it appears unlikely that any additional materials obtained by way of
15 these outstanding discovery requests would alter this Court's recommendation with respect to the
16 pending cross-motions for summary judgment.

17 (5) Plaintiff's motion to hold Dr. Munk in contempt (Dkt. No. 152) is DENIED.
18 Plaintiff seeks to have Dr. Munk held in contempt of court pursuant to Fed. R. Civ. P. 56(g)
19 because the sworn affidavit submitted by Dr. Munk in support of his motion for summary
20 judgment was, according to plaintiff, submitted in bad faith. Plaintiff asserts that Dr. Munk and
21 his counsel, by way of the challenged affidavit, are attempting to defraud the court. Plaintiff
22 further asserts that his own sworn testimony together with the verifiable medical records

01 demonstrate Dr. Munk's deception. In fact, plaintiff offers no evidence that any portion of Dr.
02 Munk's affidavit is knowingly false or that it was submitted for any improper purpose.
03 Accordingly, there is no basis on which to hold Dr. Munk in contempt.

04 (6) The Clerk shall send copies of this Order to plaintiff, to counsel for Dr. Munk, and
05 to the Honorable James L. Robart.

06 DATED this 11th day of February, 2009.

07
08 
09 Mary Alice Theiler
United States Magistrate Judge